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UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF CALIFORNIA

YELLOWCAKE, INC., California  
corporation,  
  
Plaintiff,  
  
v.  
  
HYPHY MUSIC, INC.,  
  
Defendant.

**Case No.: 1:20-cv-00988-AWI-BAM**  
[Assigned to the Hon. Jennifer L. Thurston]  
**DECLARATIO OF JOSE MARTINEZ IN  
SUPPORT OF  
DEFENDANT/COUNTERCLAIMANT'S  
NOTICE OF MOTION AND MOTION  
FOR SUMMARY JUDGMENT**

HYPHY MUSIC, INC.,  
  
Counterclaimant,  
  
v.  
  
YELLOWCAKE, INC.; COLONIZE  
MEDIA, INC; JOSE DAVID  
HERNANDEZ; and JESUS  
CHAVEZ SR,  
  
Counter-Defendants.

Date: June 27, 2023  
Time: 9:00 a.m.  
Dept.: Courtroom 4 (7<sup>th</sup> Floor)  
2500 Tulare Street  
Fresno, CA 93721  
Judge: Hon. Jennifer L. Thurston

DECLARATION OF JOSE MARTINEZ

**DECLARATION OF JOSE MARTINEZ**

I, Jose Martinez, declare and state as follows:

1. I am an individual currently residing in Fresno, California, and am over 18 years of age. I am the owner and Chief Executive Officer of Defendant/Counterclaimant HYPHY MUSIC, INC., a California corporation (“Hyphy”) in this action. I know all of the following facts of my own personal knowledge and, if called upon and sworn as a witness, could and would competently testify thereto.

2. Hyphy is a record label in the business of collaborating with recording artists to produce, distribute, and otherwise exploit sound and audiovisual recordings, coupled with artwork.

3. In or about February 2013, Hyphy and the musical group Los Originales De San Juan (“the **Group**”) began working together to co-create various sound recordings to be embodied on multiple albums, which they orally agreed were to be owned by Hyphy (the “**Agreement**”). The Group, which was comprised of Chavez, as the lead singer, Domingo Torres Flores, as the accordion player (“**Flores**”), and Alfonso Vargas, as the drummer (“**Vargas**”), performs a style of accordion music originating from Northern Mexico, and is popular with listeners primarily because of the accordion music contained within the songs the Group performs and records. It should also be noted that Counter-Defendant JOSE DAVID HERNANDEZ (“**Hernandez**”), a party to this action who also co-owns and controls Plaintiff/Cross-Defendant YELLOWCAKE, INC. (“**Yellowcake**”) and Counter-Defendant COLONIZE MEDIA, INC. (“**Colonize**”), is someone who also used to work with Hyphy. As such, Hernandez obtained valuable information about Hyphy throughout the course of his work with Hyphy – including the knowledge that Hyphy’s Agreement with the Group was oral.

4. The albums created pursuant to the Agreement are entitled (1) “Amigos y Contrarios”; (2) “Corridos de Poca M”; (3) “El Campesino”; (4) “Desde La

1 Cantina de Mi Barrio (En Vivo)”; and (5) “Nuestra Historia (En Vivo)”  
 2 (collectively, the “*Los Originales Albums*” or “*Albums*”). One of the other two  
 3 albums identified in Yellowcake’s Complaint, entitled “Chuy Chavez y Sus  
 4 Amigos,” has no connection to this dispute and wasn’t even recorded by Chavez.

5 5. Though the Agreement was not initially memorialized in writing,  
 6 Flores and Vargas executed Copyright Assignment Agreements on or about March  
 7 22, 2022 (collectively, the “*Assignments*”), which reflected their respective  
 8 understandings of the Agreement’s existence, and their respective original intent to  
 9 convey all rights in and to their recording services rendered pursuant to the  
 10 Agreement to Hyphy. Attached hereto as Exhibit “A” and incorporated herein by  
 11 this reference are true and correct copies of the Assignments.

12 6. Unlike the types of large, corporate record labels that most people think  
 13 of when they think of a “record label,” Hyphy closely collaborated with the Group  
 14 to create the Albums. For the first three (of five) Albums, which were recorded in  
 15 studio, Hyphy’s close collaboration with the Group included, without limitation: (a)  
 16 helping determine the “theme” and overall creative direction of each such Album;  
 17 (b) selecting the songs to be included in each such Album; (c) selecting the  
 18 recording studio, and paying for all costs associated with the recording of each such  
 19 Album; (d) hiring the sound engineer; (e) paying the Group a substantial amount to  
 20 record the Albums; and (f) overseeing and generally supervising the recording and  
 21 production of each Album. For the final two (of five) Albums, which are each  
 22 comprised of recordings from a previous live performance by the Group, Hyphy’s  
 23 close collaboration with the Group included, without limitation: (a) selecting and  
 24 paying for the venue where the live performance occurred; (b) selecting the songs to  
 25 be performed at the live performance; (c) directly employing, supervising and  
 26 directing the services of the sound engineer and videographer who each recorded the  
 27 audio and video of the live performance, respectively; (d) writing the script for the  
 28 history of the Group as part of the Group’s live performance, and hiring a

1 “MC”/commentator to narrate the script; and (e) re-recording whole portions of the  
2 guitarist’s contributions to the live performance afterwards, using a new guitarist  
3 selected, hired and paid for by Hyphy.

4 7. In addition to Hyphy’s original contributions to the production,  
5 recording and overall creation of the Los Originales Albums, Hyphy also designed  
6 and created artwork featured on the cover of each Album (the “*Album Artwork*”).

7 8. Hyphy released the Albums, with the Album Artwork, for distribution  
8 through all available digital service providers (the “*DSPs*”) upon each Album’s  
9 creation, between 2013 and 2017. When each of such Albums were released, they  
10 were each assigned unique International Standard Recording Codes (“*ISRCs*”) and  
11 Universal Product Codes (“*UPCs*”). Attached hereto as Exhibit “B” and  
12 incorporated herein by this reference are true and correct copies of screenshots  
13 evidencing the UPCs associated with each of the Albums as distributed by Hyphy.

14 9. In or about May of 2020, Hyphy obtained copyright registrations for all  
15 of the Album Artwork. True and correct copies of the copyright registrations for all  
16 of such Album Artwork are attached hereto as Exhibit “C” and incorporated herein  
17 by this reference.

18 10. Hyphy was never, at any point during all times alleged, made aware by  
19 Yellowcake or anyone else that Yellowcake had apparently entered into an “Asset  
20 Purchase and Assignment Agreement” with Chavez on or about March 21, 2019  
21 (the “*Asset Purchase Agreement*”), which purportedly granted Yellowcake rights in  
22 the Albums. I and everyone else at Hyphy had a healthy, working relationship with  
23 the Group, and Hyphy was making significant efforts to revive the Group’s  
24 popularity, including by investing in radio and social media advertising campaigns  
25 promoting the Group, and by providing the Group with all of the financial support  
26 the Group needed to produce albums. As such, no one in the Group ever told anyone  
27 for Hyphy that they were unhappy with their arrangement with Hyphy, wanted to  
28 terminate such arrangement, or believed that anyone other than Hyphy actually

1 possessed the rights in the Albums Hyphy possesses. In fact, at the time of apparent  
2 execution of the Asset Purchase Agreement, the Group had just posed for pictures to  
3 be incorporated into the Album Artwork of a new album to be released.

4 11. If Chavez did indeed have the ability to assign rights in the Albums to  
5 any other record label, Hyphy would have expected such record label to reach out to  
6 Hyphy to coordinate the transfer of the sound recording files, and the unique ISRCs  
7 and UPCs assigned to each Album upon initial release by Hyphy. Instead, Hyphy  
8 simply discovered in or about April of 2019 that Yellowcake was distributing  
9 versions of the Albums with Hyphy's Album Artwork.

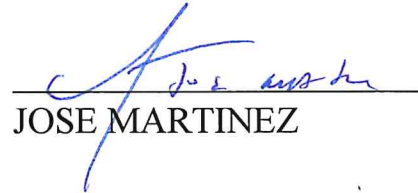
10 12. When this Complaint was first initiated by Yellowcake, various DSPs  
11 showed that Yellowcake's versions of the Albums were being distributed with  
12 Hyphy's Album Artwork. I know because I saw such instances of unauthorized use  
13 myself. However, almost all of those instances of unauthorized use of Hyphy's  
14 Album Artwork quickly disappeared from the internet. Therefore, it took me a long  
15 time to find evidence of infringement online. Fortunately, I did eventually find  
16 proof, via one of the DSP located at <daddykoolrecords.com> (the "*Website*").  
17 Attached hereto as Exhibit "D" and incorporated herein by this reference, are true  
18 and correct copies of screenshots from the Website, showing "Corridos de Poca M,"  
19 "El Campesino" and "Desde La Cantina De Mi Barrio" being distributed by  
20 Yellowcake (as verified by the non-Hyphy UPC referenced under the "Details" of  
21 each such distribution) with Hyphy's Album Artwork.

22 13. Accordingly, Hyphy brought Counterclaims against Yellowcake,  
23 Colonize and Hernandez, including a Second Counterclaim for Copyright  
24 Infringement of the Album Artwork and a Sixth Counterclaim for Unfair  
25 Competition.

26 14. If Yellowcake and Hernandez are able to avoid liability with respect to  
27 Hyphy's Second Counterclaim for Copyright Infringement simply because Colonize  
28 was, technically speaking, the only part that actually distributed the Albums with

1 Hyphy's Album Artwork, Hyphy will suffer significant injustice by not having  
2 sufficient recourse against all relevant parties in response to such wrongdoing.

3 I declare under penalty of perjury under the laws of the State of California  
4 that the foregoing is true and correct, and that this Declaration was executed on May  
5 19, 2023, at Fresno, California.

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8 JOSE MARTINEZ  
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**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that a copy of the foregoing electronically filed document has been served via a “Notice of Electronic Filing” automatically generated by the CM/ECF System and sent by e-mail to all attorneys in the case who are registered as CM/ECF users and have consented to electronic service pursuant to L.R. 5-3.3.

Dated: May 19, 2023

By: /s/ John Begakis  
John M. Begakis